UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON DIVISION

VASU D. ARORA, M.D., ET AL.,)	
Plaintiffs,)	Case No. 1:03CV00020
v.)	OPINION
JOSE A. ALEMPARTE, M.D., ET AL.,)	By: James P. Jones
Defendants.)	United States District Judge

Vasu D. Arora, M.D., Pro Se; Robert B. Altizer, Gillespie, Hart, Altizer & Whitesell, P.C., Tazewell, Virginia, for Defendant Jose A. Alemparte, M.D.

The defendant Jose A. Alemparte, M.D., filed a Motion to Dismiss to the Complaint. The plaintiff Vasu D. Arora, M.D., proceeding pro se and in forma pauperis, has responded to the motion, and it is ripe for decision.¹

In the Complaint it is alleged that Arora is a resident of California. In his response to the Motion to Dismiss Arora asserts that the additional plaintiff, Rural Health Clinics, Inc., is a dissolved Virginia corporation. Arora contends that in 1998 Alemparte violated a restrictive covenant in an employment contract with Rural

¹ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

Health Clinics, Inc. by practicing medicine with another entity in Buchanan County, Virginia. The Complaint seeks damages for this breach of contract.

A corporation may not proceed in forma pauperis and Arora, who is not an attorney, may not represent a corporation. See *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 196, 201-02 (1993). Moreover, there is not complete diversity of citizenship between the defendant and the plaintiff corporation and thus the court is without subject matter jurisdiction. *See Ripalda v. Am. Operations Corp.*, 977 F.2d 1464, 1468 (D.C. Cir. 1992) (holding that dissolved corporation continues as citizen of state of incorporation for purposes of diversity jurisdiction).

In addition, Arora does not have standing alone to sue on a claim of the corporation. A Virginia corporation whose existence has been terminated retains the indefinite right to sue on any claim existing prior to termination. *See* Va. Code Ann. § 13.1-755 (Michie 1999). Even though Arora alleges that he is the sole successor-in-interest to the corporation's assets, it is the corporation, and not Arora, who must prosecute any breach of contract claim. *See Talasila, Inc. v. United States*, 240 F.3d 1064, 1066 (Fed. Cir. 2001); *Hutson v. Fulgham Indus., Inc.*, 869 F.2d 1457, 1462-63 (11th Cir. 1989).

For these reasons, I will grant the Motion to Dismiss.² A separate order consistent with this opinion will be entered forthwith.

DATED: June 23, 2003

United States District Judge

² The Complaint also names as defendants unknown defendants ("Does 1 through 25") but there is no explanation why there are likely to be unknown party defendants to a breach of contract claim such as this. Accordingly, it is proper to dismiss the case in its entirely.